

APPEAL NO. 040908
FILED JUNE 14, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 23, 2004. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the sixth quarter. The claimant appealed, contending that he had no ability to work during the qualifying period for the sixth quarter. No response was received from the respondent (carrier).

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The SIBs criterion in issue is whether the claimant made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the sixth quarter. It is undisputed that the claimant did not work or look for work during the relevant qualifying period and his testimony reflects that he was not participating in any vocational rehabilitation program during the qualifying period. The claimant contends that he had no ability to work during the relevant qualifying period.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to work. Rule 130.102(e) provides in part that, except as provided in subsection (d)(1), (2), (3), and (4) of Rule 130.102, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts.

In the instant case, a carrier-required medical examination doctor evaluated the claimant during the qualifying period for the sixth quarter and that doctor reported that the claimant had improved sufficiently to allow the claimant to return to work with restrictions. The treating doctor has reported that the claimant is unable to work. The hearing officer found that during the qualifying period for the sixth quarter the claimant had an ability to work and did not conduct any job searches. The hearing officer further found that during the qualifying period for the sixth quarter the claimant did not make a good faith effort to obtain employment commensurate with his ability to work. The hearing officer determined that the claimant is not entitled to SIBs for the sixth quarter. The hearing officer is the sole judge of the weight and credibility of the evidence.

Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. Although there is conflicting evidence in this case with regard to the claimant's ability to work during the relevant qualifying period, we conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1975).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **ST. PAUL FIRE AND MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS, SUITE 1050
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Veronica L. Ruberto
Appeals Judge